

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1450

Introduced by Assembly Member Evans

February 22, 2005

An act to ~~repeal Section 65586~~ amend Section 65915 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1450, as amended, Evans. Land use: ~~housing elements density bonus.~~

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus or other incentives or concessions for the production of lower income housing units if the developer agrees to construct a specified percentage of the total units for specified income households or qualifying residents and requires the developer to agree to the continued affordability of the units, as specified.

This bill would require units targeted for moderate income households to be affordable at a rent that does not exceed 30% of 120% of the median income. When a unit targeted for moderate income households is sold, the bill would require the local government to either require restrictions and conditions on the resale to ensure the continued affordability to and occupancy by households of moderate income for at least 30 years or permit the seller to retain the value of improvements, the downpayment, and the seller's proportionate share of appreciation. The bill would authorize the local government to require the resale or transfer of the unit to be subject to its prior approval and subject to reasonable restrictions and

conditions. The bill would also authorize the local government to refuse to approve a resale or transfer of the unit at less than 95% of its fair market value.

The local administrative requirements imposed by the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires a city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements including a housing element. Existing law requires housing elements to comply with specified law by October 1981. A housing element that was adopted before October 1, 1981 and conformed with specified housing element guidelines adopted by the Department of Housing and Community Development is deemed to be in compliance with this requirement.~~

~~This bill would repeal those provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 65586 of the Government Code is~~
2 ~~repealed.~~

3 ~~SECTION 1. Section 65915 of the Government Code is~~
4 ~~amended to read:~~

5 65915. (a) When an applicant seeks a density bonus for a
6 housing development within, or for the donation of land for
7 housing within, the jurisdiction of a city, county, or city and
8 county, that local government shall provide the applicant
9 incentives or concessions for the production of housing units and
10 child care facilities as prescribed in this section. All cities,
11 counties, or cities and counties shall adopt an ordinance that
12 specifies how compliance with this section will be implemented.

13 (b) A city, county, or city and county shall grant a density
14 bonus and incentives or concessions described in subdivision (d)

1 when the applicant for the housing development seeks and agrees
2 to construct at least any one of the following:

3 (1) Ten percent of the total units of a housing development for
4 lower income households, as defined in Section 50079.5 of the
5 Health and Safety Code.

6 (2) Five percent of the total units of a housing development for
7 very low income households, as defined in Section 50105 of the
8 Health and Safety Code.

9 (3) A senior citizen housing development as defined in
10 Sections 51.3 and 51.12 of the Civil Code.

11 (4) Ten percent of the total dwelling units in a condominium
12 project as defined in subdivision (f) of, or in a planned
13 development as defined in subdivision (k) of, Section 1351 of the
14 Civil Code, for persons and families of moderate income, as
15 defined in Section 50093 of the Health and Safety Code.

16 (c) (1) An applicant shall agree to, and the city, county, or city
17 and county shall ensure, continued affordability of ~~all lower~~
18 ~~income units that qualified the applicant for receipt of the~~
19 ~~density bonus units~~ for 30 years or a longer period of time if
20 required by the construction or mortgage financing assistance
21 program, mortgage insurance program, or rental subsidy
22 program. ~~Those units except as follows:~~

23 (A) *Units* targeted for lower income households, as defined in
24 Section 50079.5 of the Health and Safety Code, shall be
25 affordable at a rent that does not exceed 30 percent of 60 percent
26 of area median income. ~~Those units~~

27 (B) *Units* targeted for very low income households, as defined
28 in Section 50105 of the Health and Safety Code, shall be
29 affordable at a rent that does not exceed 30 percent of 50 percent
30 of area median income.

31 (C) *Units targeted for moderate income households, as*
32 *defined in Section 50093 of the Health and Safety Code, shall be*
33 *affordable at a rent that does not exceed 30 percent of 120*
34 *percent of the area median income.*

35 (2) An applicant shall agree to, and the city, county, or city
36 and county shall ensure that, the initial occupant of the
37 moderate-income units that ~~are directly related to the~~ *qualified*
38 *the applicant for receipt of the density bonus in the condominium*
39 *project as defined in subdivision (f) of, or in the planned unit*
40 *development as defined in subdivision (k) of, Section 1351 of the*

1 Civil Code, are persons and families of moderate income, as
2 defined in Section 50093 of the Health and Safety Code. Upon
3 ~~any resale, the of the unit, the city, county, or city and county~~
4 ~~shall do either of the following:~~

5 (A) *Require restrictions and conditions on the resale of the*
6 *unit to ensure its continued affordability to and occupancy by*
7 *households of moderate income for at least 30 years.*

8 (B) *Permit the seller of the unit*~~shall~~ *to retain the value of any*
9 *improvements, the downpayment, and the seller's proportionate*
10 *share of appreciation. The local government shall recapture its*
11 *proportionate share of appreciation, which shall then be used*
12 *within three years for any of the purposes described in*
13 *subdivision (e) of Section 33334.2 of the Health and Safety Code*
14 *that promote homeownership. For purposes of this subdivision,*
15 *the local government's proportionate share of appreciation shall*
16 *be equal to the percentage by which the initial sale price to the*
17 *moderate-income household was less than the fair market value*
18 *of the home at the time of initial sale. The local government may*
19 *require that a resale or other transfer of the unit be subject to its*
20 *prior approval and subject to reasonable restrictions and*
21 *conditions. The local government may refuse to approve a sale or*
22 *transfer of the unit at less than 95 percent of its fair market*
23 *value.*

24 (d) (1) An applicant may submit to a city, county, or city and
25 county a proposal for the specific incentives or concessions that
26 the applicant requests pursuant to this section, and may request a
27 meeting with the city, county, or city and county. The city,
28 county, or city and county shall grant the concession or incentive
29 requested by the applicant unless the city, county, or city and
30 county makes a written finding, based upon substantial evidence,
31 of either of the following:

32 (A) The concession or incentive is not required in order to
33 provide for affordable housing costs, as defined in Section
34 50052.5 of the Health and Safety Code, or for rents for the
35 targeted units to be set as specified in subdivision (c).

36 (B) The concession or incentive would have a specific adverse
37 impact, as defined in paragraph (2) of subdivision (d) of Section
38 65589.5, upon public health and safety or the physical
39 environment or on any real property that is listed in the
40 California Register of Historical Resources and for which there is

1 no feasible method to satisfactorily mitigate or avoid the specific
2 adverse impact without rendering the development unaffordable
3 to low- and moderate-income households.

4 (2) The applicant shall receive the following number of
5 incentives or concessions:

6 (A) One incentive or concession for projects that include at
7 least 10 percent of the total units for lower income households, at
8 least 5 percent for very low income households, or at least 10
9 percent for persons and families of moderate income in a
10 condominium or planned development.

11 (B) Two incentives or concessions for projects that include at
12 least 20 percent of the total units for lower income households, at
13 least 10 percent for very low income households, or at least 20
14 percent for persons and families of moderate income in a
15 condominium or planned development.

16 (C) Three incentives or concessions for projects that include at
17 least 30 percent of the total units for lower income households, at
18 least 15 percent for very low income households, or at least 30
19 percent for persons and families of moderate income in a
20 condominium or planned development.

21 (3) The applicant may initiate judicial proceedings if the city,
22 county, or city and county refuses to grant a requested density
23 bonus, incentive, or concession. If a court finds that the refusal to
24 grant a requested density bonus, incentive, or concession is in
25 violation of this section, the court shall award the plaintiff
26 reasonable attorney's fees and costs of suit. Nothing in this
27 subdivision shall be interpreted to require a local government to
28 grant an incentive or concession that has a specific, adverse
29 impact, as defined in paragraph (2) of subdivision (d) of Section
30 65589.5, upon health, safety, or the physical environment, and
31 for which there is no feasible method to satisfactorily mitigate or
32 avoid the specific adverse impact. Nothing in this subdivision
33 shall be interpreted to require a local government to grant an
34 incentive or concession that would have an adverse impact on
35 any real property that is listed in the California Register of
36 Historical Resources. The city, county, or city and county shall
37 establish procedures for carrying out this section, that shall
38 include legislative body approval of the means of compliance
39 with this section. The city, county, or city and county shall also
40 establish procedures for waiving or modifying development and

1 zoning standards that would otherwise inhibit the utilization of
2 the density bonus on specific sites. These procedures shall
3 include, but not be limited to, such items as minimum lot size,
4 side yard setbacks, and placement of public works
5 improvements.

6 (e) In no case may a city, county, or city and county apply any
7 development standard that will have the effect of precluding the
8 construction of a development meeting the criteria of subdivision

9 (b) at the densities or with the concessions or incentives
10 permitted by this section. An applicant may submit to a city,
11 county, or city and county a proposal for the waiver or reduction
12 of development standards and may request a meeting with the
13 city, county, or city and county. If a court finds that the refusal to
14 grant a waiver or reduction of development standards is in
15 violation of this section, the court shall award the plaintiff
16 reasonable attorney's fees and costs of suit. Nothing in this
17 subdivision shall be interpreted to require a local government to
18 waive or reduce development standards if the waiver or reduction
19 would have a specific, adverse impact, as defined in paragraph
20 (2) of subdivision (d) of Section 65589.5, upon health, safety, or
21 the physical environment, and for which there is no feasible
22 method to satisfactorily mitigate or avoid the specific adverse
23 impact. Nothing in this subdivision shall be interpreted to require
24 a local government to waive or reduce development standards
25 that would have an adverse impact on any real property that is
26 listed in the California Register of Historical Resources.

27 (f) The applicant shall show that the waiver or modification is
28 necessary to make the housing units economically feasible.

29 (g) (1) For the purposes of this chapter, except as provided in
30 paragraph (2), "density bonus" means a density increase of at
31 least 20 percent, unless a lesser percentage is elected by the
32 applicant, over the otherwise maximum allowable residential
33 density under the applicable zoning ordinance and land use
34 element of the general plan as of the date of application by the
35 applicant to the city, county, or city and county. The amount of
36 density bonus to which the applicant is entitled shall vary
37 according to the amount by which the percentage of affordable
38 housing units exceeds the percentage established in subdivision
39 (b). For each 1 percent increase above 10 percent in the
40 percentage of units affordable to lower income households, the

1 density bonus shall be increased by 1.5 percent up to a maximum
2 of 35 percent. For each 1 percent increase above 5 percent in the
3 percentage of units affordable to very low income households,
4 the density bonus shall be increased by 2.5 percent up to a
5 maximum of 35 percent. All density calculations resulting in
6 fractional units shall be rounded up to the next whole number.
7 The granting of a density bonus shall not be interpreted, in and of
8 itself, to require a general plan amendment, local coastal plan
9 amendment, zoning change, or other discretionary approval. The
10 density bonus shall not be included when determining the
11 number of housing units that is equal to 5 or 10 percent of the
12 total. The density bonus shall apply to housing developments
13 consisting of five or more dwelling units.

14 (2) For the purposes of this chapter, if a development does not
15 meet the requirements of paragraph (1), (2), or (3) of subdivision
16 (b), but the applicant agrees or proposes to construct a
17 condominium project as defined in subdivision (f) of, or a
18 planned development as defined in subdivision (k) of, Section
19 1351 of the Civil Code, in which at least 10 percent of the total
20 dwelling units are reserved for persons and families of moderate
21 income, as defined in Section 50093 of the Health and Safety
22 Code, a “density bonus” of at least 5 percent shall be granted,
23 unless a lesser percentage is elected by the applicant, over the
24 otherwise maximum allowable residential density under the
25 applicable zoning ordinance and land use element of the general
26 plan as of the date of application by the applicant to the city,
27 county, or city and county. For each 1 percent increase above 10
28 percent of the percentage of units affordable to moderate-income
29 households, the density bonus shall be increased by 1 percent up
30 to a maximum of 35 percent. All density calculations resulting in
31 fractional units shall be rounded up to the next whole number.
32 The granting of a density bonus shall not be interpreted, in and of
33 itself, to require a general plan amendment, local coastal plan
34 amendment, zoning change, or other discretionary approval. The
35 density bonus shall not be included when determining the
36 number of housing units that is equal to 10 percent of the total.
37 The density bonus shall apply to housing developments
38 consisting of five or more dwelling units.

39 (h) When an applicant for a tentative subdivision map, parcel
40 map, or other residential development approval donates land to a

1 city, county, or city and county as provided for in this
2 subdivision, the applicant shall be entitled to a 15 percent
3 increase above the otherwise maximum allowable residential
4 density under the applicable zoning ordinance and land use
5 element of the general plan for the entire development. For each
6 1 percent increase above the minimum 10 percent land donation
7 described in paragraph (2) of this subdivision, the density bonus
8 shall be increased by 1 percent, up to a maximum of 35 percent.
9 This increase shall be in addition to any increase in density
10 mandated by subdivision (b), up to a maximum combined
11 mandated density increase of 35 percent if an applicant seeks
12 both the increase required pursuant to this subdivision and
13 subdivision (b). All density calculations resulting in fractional
14 units shall be rounded up to the next whole number. Nothing in
15 this subdivision shall be construed to enlarge or diminish the
16 authority of a city, county, or city and county to require a
17 developer to donate land as a condition of development. An
18 applicant shall be eligible for the increased density bonus
19 described in this subdivision if all of the following conditions are
20 met:

21 (1) The applicant donates and transfers the land no later than
22 the date of approval of the final subdivision map, parcel map, or
23 residential development application.

24 (2) The developable acreage and zoning classification of the
25 land being transferred are sufficient to permit construction of
26 units affordable to very low income households in an amount not
27 less than 10 percent of the number of residential units of the
28 proposed development.

29 (3) The transferred land is at least one acre in size or of
30 sufficient size to permit development of at least 40 units, has the
31 appropriate general plan designation, is appropriately zoned for
32 development as affordable housing, and is or will be served by
33 adequate public facilities and infrastructure. The land shall have
34 appropriate zoning and development standards to make the
35 development of the affordable units feasible. No later than the
36 date of approval of the final subdivision map, parcel map, or of
37 the residential development, the transferred land shall have all of
38 the permits and approvals, other than building permits, necessary
39 for the development of the very low income housing units on the
40 transferred land, except that the local government may subject

1 the proposed development to subsequent design review to the
2 extent authorized by subdivision (i) of Section 65583.2 if the
3 design is not reviewed by the local government prior to the time
4 of transfer.

5 (4) The transferred land and the affordable units shall be
6 subject to a deed restriction ensuring continued affordability of
7 the units consistent with paragraphs (1) and (2) of subdivision
8 (c), which shall be recorded on the property at the time of
9 dedication.

10 (5) The land is transferred to the local agency or to a housing
11 developer approved by the local agency. The local agency may
12 require the applicant to identify and transfer the land to the
13 developer.

14 (6) The transferred land shall be within the boundary of the
15 proposed development or, if the local agency agrees, within
16 one-quarter mile of the boundary of the proposed development.

17 (i) (1) When an applicant proposes to construct a housing
18 development that conforms to the requirements of subdivision (b)
19 and includes a child care facility that will be located on the
20 premises of, as part of, or adjacent to, the project, the city,
21 county, or city and county shall grant either of the following:

22 (A) An additional density bonus that is an amount of square
23 feet of residential space that is equal to or greater than the
24 amount of square feet in the child care facility.

25 (B) An additional concession or incentive that contributes
26 significantly to the economic feasibility of the construction of the
27 child care facility.

28 (2) The city, county, or city and county shall require, as a
29 condition of approving the housing development, that the
30 following occur:

31 (A) The child care facility shall remain in operation for a
32 period of time that is as long as or longer than the period of time
33 during which the density bonus units are required to remain
34 affordable pursuant to subdivision (c).

35 (B) Of the children who attend the child care facility, the
36 children of very low income households, lower income
37 households, or families of moderate income shall equal a
38 percentage that is equal to or greater than the percentage of
39 dwelling units that are required for very low income households,

1 lower income households, or families of moderate income
2 pursuant to subdivision (b).

3 (3) Notwithstanding any requirement of this subdivision, a
4 city, county, or a city and county shall not be required to provide
5 a density bonus or concession for a child care facility if it finds,
6 based upon substantial evidence, that the community has
7 adequate child care facilities.

8 (4) "Child care facility," as used in this section, means a child
9 day care facility other than a family day care home, including,
10 but not limited to, infant centers, preschools, extended day care
11 facilities, and schoolage child care centers.

12 (j) "Housing development," as used in this section, means one
13 or more groups of projects for residential units constructed in the
14 planned development of a city, county, or city and county. For
15 the purposes of this section, "housing development" also includes
16 a subdivision or a planned unit development or condominium
17 project, as defined in Section 1351 of the Civil Code, approved
18 by a city, county, or city and county and consists of residential
19 units or unimproved residential lots and either a project to
20 substantially rehabilitate and convert an existing commercial
21 building to residential use or the substantial rehabilitation of an
22 existing multifamily dwelling, as defined in subdivision (d) of
23 Section 65863.4, where the result of the rehabilitation would be a
24 net increase in available residential units. For the purpose of
25 calculating a density bonus, the residential units do not have to
26 be based upon individual subdivision maps or parcels. The
27 density bonus shall be permitted in geographic areas of the
28 housing development other than the areas where the units for the
29 lower income households are located.

30 (k) The granting of a concession or incentive shall not be
31 interpreted, in and of itself, to require a general plan amendment,
32 local coastal plan amendment, zoning change, or other
33 discretionary approval. This provision is declaratory of existing
34 law.

35 (l) For the purposes of this chapter, concession or incentive
36 means any of the following:

37 (1) A reduction in site development standards or a
38 modification of zoning code requirements or architectural design
39 requirements that exceed the minimum building standards
40 approved by the California Building Standards Commission as

1 provided in Part 2.5 (commencing with Section 18901) of
2 Division 13 of the Health and Safety Code, including, but not
3 limited to, a reduction in setback and square footage
4 requirements and in the ratio of vehicular parking spaces that
5 would otherwise be required that results in identifiable,
6 financially sufficient, and actual cost reductions.

7 (2) Approval of mixed use zoning in conjunction with the
8 housing project if commercial, office, industrial, or other land
9 uses will reduce the cost of the housing development and if the
10 commercial, office, industrial, or other land uses are compatible
11 with the housing project and the existing or planned development
12 in the area where the proposed housing project will be located.

13 (3) Other regulatory incentives or concessions proposed by the
14 developer or the city, county, or city and county that result in
15 identifiable, financially sufficient, and actual cost reductions.

16 This subdivision does not limit or require the provision of
17 direct financial incentives for the housing development,
18 including the provision of publicly owned land, by the city,
19 county, or city and county, or the waiver of fees or dedication
20 requirements.

21 (m) Nothing in this section shall be construed to supersede or
22 in any way alter or lessen the effect or application of the
23 California Coastal Act (Division 20 (commencing with Section
24 30000) of the Public Resources Code).

25 (n) Nothing in this section shall be construed to prohibit a city,
26 county, or city and county from granting a density bonus greater
27 than what is described in this section for a development that
28 meets the requirements of this section or from granting a
29 proportionately lower density bonus than what is required by this
30 section for developments that do not meet the requirements of
31 this section.

32 (o) For purposes of this section, the following definitions shall
33 apply:

34 (1) "Development standard" includes site or construction
35 conditions that apply to a residential development pursuant to
36 any ordinance, general plan element, specific plan, charter
37 amendment, or other local condition, law, policy, resolution, or
38 regulation.

39 (2) "Maximum allowable residential density" means the
40 density allowed under the zoning ordinance, or if a range of

1 density is permitted, means the maximum allowable density for
2 the specific zoning range applicable to the project.

3 (p) (1) Upon the request of the developer, no city, county, or
4 city and county shall require a vehicular parking ratio, inclusive
5 of handicapped and guest parking, of a development meeting the
6 criteria of subdivision (b), that exceeds the following ratios:

7 (A) Zero to one bedrooms: one onsite parking space.

8 (B) Two to three bedrooms: two onsite parking spaces.

9 (C) Four and more bedrooms: two and one-half parking
10 spaces.

11 (2) If the total number of parking spaces required for a
12 development is other than a whole number, the number shall be
13 rounded up to the next whole number. For purposes of this
14 subdivision, a development may provide “onsite parking”
15 through tandem parking or uncovered parking, but not through
16 onstreet parking.

17 (3) This subdivision shall apply to a development that meets
18 the requirements of subdivision (b) but only at the request of the
19 applicant. An applicant may request additional parking incentives
20 or concessions beyond those provided in this section, subject to
21 subdivision (d).

22 *SEC. 2. No reimbursement is required by this act pursuant to*
23 *Section 6 of Article XIII B of the California Constitution because*
24 *a local agency or school district has the authority to levy service*
25 *charges, fees, or assessments sufficient to pay for the program or*
26 *level of service mandated by this act, within the meaning of*
27 *Section 17556 of the Government Code.*